

REMARKS

In the above referenced Office Action the Examiner rejected Claims 28-33 under the judicially created doctrine of double patenting over claims 1-27 of U. S. Patent No. 6652430 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The examiner stated, "The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a frame, a seat, a thigh engagement device, thigh positioning device, a lumbar positioning device and adjustment means.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F .2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804."

Applicant calls the Examiner's attention to the prosecution history of the parent application where the Examiner required restriction to these claims which were in the application that matured into such issued patent. Accordingly, the examiner is requested to withdraw his rejection of Claims 28-33 under the judicially created doctrine of double patenting over claims 1-27 of U. S. Patent No. 6652430.

Additionally, the Examiner rejected Claims 28-33 under 35 U.S.C. 102(e) as being anticipated by Batca et al. He stated, "Batca et al disclose an apparatus having a frame (20), seat (34) and thigh engagement device (71; col. 3, lines 55-56). Regarding the language, "for a training apparatus in which an individual performs bending movements about the hip axis", "for contacting and restraining an upper surface of a thigh of an individual utilizing such training apparatus and seated on said seat such that a buttocks portion of such individual is in contact with said upper surface of said seat" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 29, the limitation "said thigh engagement surface" has not been given patentable weight because the surface has not been positively recited in the independent claim. As to claim 30, further including positioning means (58). Regarding the language, "for selectively adjusting at least one of a height of said thigh bolster relative to said seat and a horizontal distance of said thigh bolster relative to said seat" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 31, further including a lumbar positioning device (24). Regarding the language, "for contacting and positioning a lumbar region of an individual utilizing said training machine and seated on said

seat such that a buttocks portion of such individual is in contact with said upper surface of said seat" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 32, including a lumbar bolster (37). As to claim 33, including a lumbar positioning adjustment means (36)."

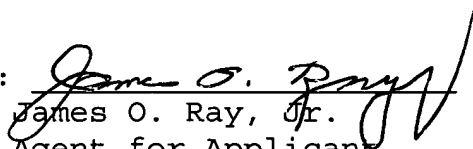
Applicant has now amended Independent Claim 28 to positively recite, "said thigh engagement device includes a thigh bolster having a surface for engaging and restraining such upper surface of such thigh of such individual utilizing said training device and said thigh engagement device additionally includes a thigh engagement positioning means for selectively adjusting at least one of a height of said thigh bolster relative to said seat and a horizontal distance of said thigh bolster relative to said seat". Further, Claims 29 and 30 have been cancelled. In view of this amendment to Claim 28 the Examiner is respectfully requested to withdraw his rejection of Claims 29 and 31-33 under 35 U.S.C. 102(e) as being anticipated by Batca et al.

In the event the Examiner has further difficulties with the allowance of the application, he is invited to contact the undersigned attorney by telephone at (412)380-0725 to resolve any remaining questions or issues by interview and/or by

Examiner's amendment as to any matter that will expedite the completion of the prosecution of the application.

Respectfully submitted,

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